

(Additional counsel on following page)

JESSICA R. PERRY (SBN 209321)

[jperry@orrick.com](mailto:jperry@orrick.com)

MELINDA S. RIECHERT (SBN 65504)

[mrieichert@orrick.com](mailto:mrieichert@orrick.com)

ORRICK, HERRINGTON & SUTCLIFFE LLP

1000 Marsh Road

Menlo Park, CA 94025-1015

Telephone: +1 650 614 7400

Facsimile: +1 650 614 7401

KATHRYN G. MANTOAN (SBN 239649)

[kmantoan@orrick.com](mailto:kmantoan@orrick.com)

ORRICK, HERRINGTON & SUTCLIFFE LLP

The Orrick Building

405 Howard Street

San Francisco, CA 94105-2669

Telephone: +1 415 773 5700

Facsimile: +1 415 773 5759

Attorneys for Defendant

Apple Inc.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASHLEY GJOVIK,

Plaintiff,

v.

APPLE INC.,

Defendant.

Case No. 23-cv-4597-EMC

**DEFENDANT APPLE INC.'S NOTICE  
OF MOTION AND MOTION TO  
STRIKE PORTIONS OF PLAINTIFF'S  
FOURTH AMENDED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

Dept: Courtroom 5, 17th Floor  
Judge: Honorable Edward M. Chen  
Date: August 22, 2024  
Time: 1:30 p.m.

1 KATE E. JUVINALL (SBN 315659)  
2 [kjuvinall@orrick.com](mailto:kjuvinall@orrick.com)  
3 ORRICK, HERRINGTON & SUTCLIFFE LLP  
4 631 Wilshire Blvd., Suite 2-C  
5 Santa Monica, CA 90401  
6 Telephone: +1 310 633 2800  
7 Facsimile: +1 310 633 2849

8 RYAN D. BOOMS (SBN 329430)  
9 [rbooms@orrick.com](mailto:rbooms@orrick.com)  
10 ORRICK, HERRINGTON & SUTCLIFFE LLP  
11 2100 Pennsylvania Avenue NW  
12 Washington, D.C. 20037  
13 Telephone: +1 202 339 8400  
14 Facsimile: +1 202 339 8500

15 Attorneys for Defendant  
16 Apple Inc.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**NOTICE OF MOTION AND MOTION TO STRIKE**

TO PLAINTIFF ASHLEY GJOVIK: **PLEASE TAKE NOTICE** that on August 22, 2024, at 1:30 p.m. in Courtroom 5, on the 17th Floor of the above-titled Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant Apple Inc. will move the Court for an Order striking certain allegations in Plaintiff Ashley Gjovik’s Fourth Amended Complaint on the grounds that the allegations are immaterial, and thus striking them is proper under Federal Rule of Civil Procedure 12(f). This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the complete pleadings and records on file, and other evidence and arguments as may be presented at the hearing on this Motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In conjunction with its motion to dismiss portions of Plaintiff’s Fourth Amended Complaint (“4AC”), Apple moves to strike allegations in the 4AC under Federal Rule of Civil Procedure (“FRCP”) 12(f) to truncate Plaintiff’s still sprawling 74-page complaint. Apple’s goal is simple: to settle the pleadings and have a clear complaint on file for the Court and the parties, and to which future questions about relevance, scope, and discovery can be tethered.

While Plaintiff heeded the Court’s advice in the May 20, 2024 order (“May 20 Order”) and did not re-plead various claims (*see* 4AC ¶6), the 4AC inadequately pleads numerous claims that are time barred and/or not legally cognizable, not premised on purported retaliation, and/or untethered to her employment with Apple, which the Court has already stated is the “gist” of her lawsuit. *See* Dkt. 73 at 1 (“The gist of [Plaintiff’s] suit is that Apple retaliated against her because she complained about conduct at the company[.]”). Thus, Apple has contemporaneously filed a motion to dismiss directed at eleven of Plaintiff’s thirteen claims, including claims for unfair competition, nuisance, ultrahazardous activity, and intentional infliction of emotional distress—all of which are untethered to her employment—as well as a handful of the retaliation-based claims that are inadequately pled and/or not legally cognizable. If the Court grants Apple’s motion to dismiss, the only claims that would remain are only those directly related to Plaintiff’s termination of employment.

1 In this Motion, Apple asks the Court to strike all allegations that clearly relate only to  
 2 those claims Apple is moving to dismiss, to the extent the Court dismisses those claims. Striking  
 3 these immaterial allegations is integral to streamlining resolution of the action, and to preventing  
 4 the waste of this Court's and the parties' time and resources.<sup>1</sup>

## 5 **II. BACKGROUND/STATEMENT OF ISSUES**

6 Plaintiff filed her initial Complaint on September 7, 2023, asserting ten claims against her  
 7 former employer, Apple. Dkt. 1. On October 25, 2023, Plaintiff filed a First Amended Complaint  
 8 ("FAC"), asserting twelve claims in 335 pages and 1,121 paragraphs. Dkt. 17. Then, faced with  
 9 Apple's motion to dismiss the FAC, Plaintiff filed the Second Amended Complaint ("SAC") on  
 10 December 21, 2023, again asserting twelve claims by now expanding her pleading to cover 666  
 11 pages across 1,620 paragraphs. Dkt. 33. On January 30, 2024, the Court *sua sponte* dismissed the  
 12 SAC for failure to comply with FRCP 8's mandate that a complaint be "simple, concise, and  
 13 direct." Dkt. 46 at 2. The Court granted Plaintiff leave file an amended complaint that complies  
 14 with FRCP 8 and is no longer than 75 pages. *Id.* at 3-4. On February 27, 2024, Plaintiff filed a  
 15 Third Amended Complaint asserting fifteen claims (three more than before) that span 75 pages  
 16 and 261 paragraphs. Dkt. 47. Apple moved to dismiss 13 of the 15 claims, which the Court  
 17 granted in part and denied in part in the May 20 Order, allowing Plaintiff leave to amend a limited  
 18 number of claims. Dkt. 73. On June 18, 2024, Plaintiff filed the operative 4AC, which asserts 13  
 19 causes of action and includes new theories and claims absent from the TAC and not authorized by  
 20 the leave granted by the Court on May 20. Dkt. 78 at 5-6.

21 Apple has contemporaneously filed a motion to dismiss eleven of the thirteen claims in  
 22 the 4AC in whole or in part:

---

23 <sup>1</sup> Concurrently, Apple is moving to dismiss in part the Second Claim in the 4AC premised on  
 24 alleged whistleblower retaliation under Labor Code section 1102.5 (to the extent Plaintiff does  
 25 not allege a specific statute as legally required and/or seeks civil penalties), to dismiss in part the  
 26 Fifth Claim in the 4AC for retaliation under Labor Code section 98.6 (to the extent it seeks civil  
 27 penalties), and to dismiss in part the Sixth Claim in the 4AC for retaliation under Labor Code  
 28 sections 232, 232.5, 1101, and 1102 (to the extent premised on alleged statements regarding  
 Palestinians, Muslims, and Uyghurs, or on the disclosure of wages). To the extent the Court  
 thinks FRCP 12(f) (rather than FRCP 12(b)(6)) is the preferred vehicle to excise part of a claim  
 from a complaint, Apple also moves in the alternative to strike these portions of the Second, Fifth,  
 and Sixth Claims, for the reasons set forth in Apple's motion to dismiss (Dkt. 78) at pages 19-21,  
 21-21, and 22-23, respectively.

- (1) whistleblower retaliation under Labor Code section 1102.5 (Second Claim);
- (2) retaliation under Labor Code section 6399.7 (Fourth Claim);
- (3) retaliation under Labor Code section 98.6 (Fifth Claim);
- (4) retaliation under Labor Code sections 232, 232.5, 1101 and 1102 (Sixth Claim);
- (5) retaliation under Labor Code section 96(k) (Seventh Claim);
- (6) breach of implied covenant (Eighth Claim);
- (7) unfair competition (Ninth Claim);
- (8) IIED based on outrageous conduct (Tenth Claim);
- (9) private nuisance (Eleventh Claim);
- (10) ultrahazardous activities (Twelfth Claim); and
- (11) IIED based on fear of cancer (Thirteenth Claim).

Apple incorporates by reference its motion to dismiss, in which it explains what it understands to be the purported basis for each of these claims. *See* Dkt. 78. With respect to the allegations that clearly relate only to those claims Apple seeks to dismiss, they too should be stricken if the Court grants Apple's motion to dismiss those claims.<sup>2</sup>

### **III. LEGAL STANDARD**

The Court may strike from a pleading "any redundant, immaterial, impertinent, or scandalous matter." FRCP 12(f). The purpose of a motion to strike is to "avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (granting motion to strike), *rev'd on other grounds*, 510 U.S. 517 (1994). Matter is "immaterial" if it "has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy*, 984 F.2d at 1527. "[M]otions to strike are proper, even if the material is not prejudicial to the moving

---

<sup>2</sup> Should the Court grant Apple's motion to dismiss, only the following claims would remain: (1) wrongful termination (First Claim); (2) 1102.5 (Second Claim) to the extent it is based on the allegations paragraph 168, at 50:9-25 and seeks remedies other than civil penalties; (3) retaliation under Labor Code section 6310 (Third Claim); (4) retaliation under Labor Code section 96(k) (Fifth Claim) to extent it seeks remedies other than civil penalties; and (5) retaliation under Labor Code section 232.5 (Sixth Claim) to the extent it is based on the allegations in paragraph 182.

party, if granting the motion would make trial less complicated or otherwise streamline the ultimate resolution of the action.” *Barajas v. Carriage Servs., Inc.*, 2020 WL 1189854, at \*5 (N.D. Cal. Mar. 12, 2020) (citations omitted).

#### IV. ARGUMENT

The Court should strike all allegations that clearly relate only to the dismissed claims, to the extent the Court grants Apple’s motion to dismiss. Plaintiff’s Complaint is still an expansive and muddled seventy-four pages and 246 paragraphs, and striking allegations that are not necessary to the remaining and adequately pled claims will assist both the Court and the parties in streamlining the action and narrowing the issues. *See Barajas*, 2020 WL 1189854, at \*5; *Fantasy*, 984 F.2d at 1527. Apple attaches **Exhibit A**, which is a highlighted version of the 4AC; every paragraph highlighted is one identified below that Apple moves to strike.

The paragraphs and/or allegations (including footnotes) that clearly relate only to those claims Apple seeks to dismiss are identified here by Claim.

- **Whistleblower retaliation under Labor Code section 1102.5 (Second Claim)**

- ¶2, lines 7-11 (starting at “at two different” and ending with “done to her.”) (allegations regarding 3250 Scott building)
- ¶3, lines 24-27 (starting with “Gjovik’s public advocacy”) (allegations regarding 3250 Scott building)
- ¶10, line 10 (“and 3250 Scott Boulevard in Santa Clara,”) (allegations regarding 3250 Scott building)
- ¶¶26-46, 57-60, 71-72 (allegations regarding 3250 Scott building)
- ¶83, lines 27-28 (“not even yet knowing about the ARIA facility”) (allegations regarding 3250 Scott building)
- ¶¶149-51 (allegations regarding 3250 Scott building)
- ¶168, p. 49, lines 17-28; p. 50, lines 1-8, 25-28 (allegations setting forth legal claim)
- Prayer for Relief, ¶viii (seeking remedy specific to 1102.5 and 98.6 claims)

- **Retaliation under Labor Code section 6399.7 (Fourth Claim)**

- ¶¶175-76 (allegations setting forth legal claim)
- **Retaliation under Labor Code section 98.6 (Fifth Claim)**
  - ¶¶177-80 (allegations setting forth legal claim)
  - Prayer for Relief, ¶viii (seeking remedy specific to 98.6 and 1102.5 claims)
- **Retaliation under Labor Code sections 232, 232.5, 1101 and 1102 (Sixth Claim)**
  - ¶¶181, 183-84 (allegations setting forth legal claim)
- **Retaliation under Labor Code section 96(k) (Seventh Claim)**
  - ¶¶185-88 (allegations setting forth legal claim)
- **Breach of implied covenant (Eighth Claim)**
  - ¶¶189-91 (allegations setting forth legal claim)
- **Unfair competition (Ninth Claim)**
  - ¶¶192-207 (allegations setting forth legal claim)
  - Prayer for Relief, ¶ xi (seeking remedies specific to UCL claim)
- **IIED based on outrageous conduct (Tenth Claim)**
  - ¶¶138-40 (allegations regarding alleged threats and intimidation underling IIED claim)
  - ¶¶208-22 (allegations setting forth legal claim)
- **Private nuisance (Eleventh Claim)**
  - ¶2, lines 7-11 (starting at “at two different” and ending with “done to her.”) (allegations regarding 3250 Scott building)
  - ¶3, lines 24-27 (starting with “Gjovik’s public advocacy”) (allegations regarding 3250 Scott building)
  - ¶10, line 10 (“and 3250 Scott Boulevard in Santa Clara,”) (allegations regarding 3250 Scott building)
  - ¶¶26-46, 57-60, 71-72 (allegations regarding 3250 Scott building)
  - ¶83, lines 27-28 (“not even yet knowing about the ARIA facility”) (allegations regarding 3250 Scott building)

- ¶¶149-51 (allegations regarding 3250 Scott building)
- ¶¶223-27 (allegations setting forth legal claim)
- Prayer for Relief, ¶vi (seeking remedies specific to nuisance and ultrahazardous claims)

• **Ultrahazardous activities (Twelfth Claim)**

- ¶2, lines 7-11 (starting at “at two different” and ending with “done to her.”) (allegations regarding 3250 Scott building)
- ¶3, lines 24-27 (starting with “Gjovik’s public advocacy”) (allegations regarding 3250 Scott building)
- ¶10, line 10 (“and 3250 Scott Boulevard in Santa Clara,”) (allegations regarding 3250 Scott building)
- ¶¶26-46, 57-60, 71-72 (allegations regarding 3250 Scott building)
- ¶83, lines 27-28 (“not even yet knowing about the ARIA facility”) (allegations regarding 3250 Scott building)
- ¶¶149-51 (allegations regarding 3250 Scott building)
- ¶¶228-37 (allegations setting forth legal claim)
- Prayer for Relief, ¶vi (seeking remedies specific to nuisance and ultrahazardous claims)

• **IIED based on fear of cancer (Thirteenth Claim)**

- ¶2, lines 7-11 (starting at “at two different” and ending with “done to her.”) (allegations regarding 3250 Scott building)
- ¶3, lines 24-27 (starting with “Gjovik’s public advocacy”) (allegations regarding 3250 Scott building)
- ¶10, line 10 (“and 3250 Scott Boulevard in Santa Clara,”) (allegations regarding 3250 Scott building)
- ¶¶26-46, 57-60, 71-72 (allegations regarding 3250 Scott building)
- ¶83, lines 27-28 (“not even yet knowing about the ARIA facility”) (allegations regarding 3250 Scott building)



- ¶¶ 149-51 (allegations regarding 3250 Scott building)
- ¶¶ 238-46 (allegations setting forth legal claim)

**V. CONCLUSION**

For the reasons stated, Apple respectfully requests that the Court grant its Motion to Strike.

Dated: July 15, 2024

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: \_\_\_\_\_



JESSICA R. PERRY  
Attorneys for Defendant  
Apple Inc.